

THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.13237 of 2006

Dated:31st July, 2006

Between:

N.R.C.Reddy.

.....PETITIONER

AND

APSRTC, Musheerabad, Hyderabad.
Rep by its Managing Director & another.

....RESPONDENTS

**THE HONOURABLE SRI JUSTICE
N.V.RAMANA**

W.P.No.13237 of 2006

ORDER:

Assailing the action of the respondents in not paying the gratuity amount to the petitioner for his out of employment period from 25-7-1972 to 01-2-1988 i.e., from the date of removal to the date of reinstatement on the ground that this Court in W.P.No.5593 of 1988 filed by the petitioner though reinstated the petitioner into service there is no specific direction to reckon the past service for the purpose of gratuity.

The petitioner was appointed as Conductor in the respondent Corporation and subsequently promoted as Assistant Depot Clerk and worked as such and retired from service on 31-5-2006. The petitioner while working in the Corporation was removed from service by proceedings dated 24-7-1972 on the charge of cash and ticket irregularities, which was assailed in I.D.No.213 of 1986 and the labour Court, ordered for reinstatement into service afresh. Pursuant to the award, the petitioner was reinstated into service on 2-2-1988. Thereafter, the petitioner filed W.P.No.5593 of 1988 before this Court and this Court by order dated 11-8-1992 disposed of the writ petition modifying the award made in I.D.No.213 of 1986 to that of continuity of service but without back-wages and

attendant benefits. The grievance of the petitioner is that the respondent-Corporation has not paid him gratuity for the period from 25-7-1972 to 01-02-1988 i.e., from the date of removal to the date of reinstatement.

Learned counsel for the petitioner submitted that though this court while reinstating the petitioner not granted back-wages and attendant benefits, however maintained continuity of service from 25-7-1972 to 1-2-1988, the period during which the petitioner was out of service, and the petitioner is entitled to gratuity for the above said period from 25-7-1972 to 1-2-1988. In support of his submission the learned counsel for the petitioner relied upon ***M.Rama Rao Vs. Asst. Traffic Manager, A.P.S.R.T.C, Hyderabad and another*** ^[1] wherein this Court held that once if an employee is granted continuity of service by the Labour Court or the High Court it shall be deemed that he is entitled for gratuity payable to him and the action of the respondents in not granting gratuity to the petitioner on the ground that there is no specific direction to reckon the past service for the purpose of gratuity is illegal. The learned counsel further submitted that against the orders passed in W.P.No.5593 of 1988 S.L.P. filed by the respondent Corporation was also dismissed.

The learned Standing counsel for A.P.S.R.T.C though contended that the petitioner is not entitled for gratuity as there is no specific direction to reckon the past service has not disputed the proposition put forth by the learned counsel for the petitioner in ***M.Rama Rao Vs. Asst. Traffic Manager, A.P.S.R.T.C, Hyderabad and another***. The learned counsel also not disputed the submission of the learned counsel for the petitioner that against the orders passed in W.P.No.5593 of 1988 S.L.P. filed by the respondent Corporation was also dismissed

Heard the learned counsel for the petitioner as also the learned Standing Counsel for A.P.S.R.T.C and perused the order of the labour Court and the order of this Court passed in W.P.No.5593 of 1988 and the judgment relied upon by the learned counsel for the petitioner.

A perusal of the order in W.P.No.5593 of 1988 discloses that this court has granted continuity of service. When continuity of service is granted to the petitioner it should be deemed that the petitioner is entitled for gratuity for the period for which he is out of service i.e., from 25-7-1972 to 01-2-1988. In the circumstances, I deem it appropriate to dispose of the writ petition as under:

The writ petition is accordingly allowed and the respondents are directed to consider the case of the petitioner for payment of gratuity taking into account the out of employment period i.e., 25-7-1972 to 01-2-1988 if not already paid as claimed by the petitioner particularly in the light of the above said judgment in ***M.Rama Rao Vs. Asst. Traffic Manager, A.P.S.R.T.C, Hyderabad and another.*** No costs.

(N.V. RAMANA, J.)

Date:31st July, 2006.

GRK

The petitioner was appointed as Conductor in the respondent Corporation and subsequently promoted as Deputy Superintendent (T) on 28-12-1998 and retired from service on 31-12-2005. The petitioner while working in the Corporation was removed from service by proceedings dated 05-10-1976 on the charge of cash and ticket irregularities, which was assailed in I.D.No.157 of

1980 and the labour Court by award dated 28-5-1984, ordered for reinstatement into service without back wages and held him to be entitled to all attendant benefits. Pursuant to the award, the petitioner was reinstated into service on 28-9-1984 and continued till retirement. The grievance of the petitioner is that the respondent-Corporation has not paid him gratuity for the period from 05-10-1976 to 28-9-1984 i.e., from the date of removal to the date of reinstatement.

The learned counsel for the petitioner submits that the issue involved in this Writ Petition is squarely covered by a decision of this Court in ***M.Rama Rao Vs. Asst. Traffic Manager, A.P.S.R.T.C, Hyderabad and another***^[2] wherein this Court held that in a case where under Section 11 of the Industrial Disputes Act, 1947, the Labour Court has set aside the order of removal of any employee and directed that the employee be reinstated into service with continuity of service, the management could not deny the payment of gratuity to the employee on his retirement for the period during which he was out of employment as a result of the illegal order of removal. The learned counsel for the respondents also conceded that the present the writ petition is covered by the above said judgment and the petitioner is entitled for the relief sought for.

Heard the learned counsel for the petitioner as also the learned Standing Counsel for A.P.S.R.T.C and perused the order of the labour Court and the judgment relied upon by the learned counsel for the petitioner.

The material on record discloses that the petitioner has not made any representation to the respondents bringing forth the fact that he is entitled for the gratuity for out of employment period in the light of the judgment of this Court in ***M.Rama Rao Vs. Asst. Traffic Manager, A.P.S.R.T.C, Hyderabad and another***. However, taking into consideration the facts, particularly, when there is no appeal is filed against the award of the Labour Court, I deem it appropriate to dispose of the writ petition with a direction as under:

The respondents are directed to consider the case of the petitioner for payment of gratuity taking into account the out of employment period i.e., 5-10-1976 to 28-9-1984 if not already paid as claimed by the petitioner particularly in the light of the above said

judgment in ***M.Rama Rao Vs. Asst. Traffic Manager, A.P.S.R.T.C, Hyderabad and another.*** No costs.

The same point was argued by the counsel for the respondent at the time of hearing of the matter, but

[\[1\]](#) ^[1] 1998 (3) ALD 76

[\[2\]](#) 1998 (3) ALD 76